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Clerk of the Court, Executive Officer / Clerk of the Court

By: Lynette Rushing Deputy

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ENVIRONMENTAL DEMOCRACY PROJECT

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ALAMEDA**

10 ENVIRONMENTAL DEMOCRACY
11 PROJECT, a non-profit corporation,

12 Petitioner and Plaintiff,

13 v.

14 CITY OF OAKLAND; CITY OF OAKLAND
15 PLANNING AND BUILDING
16 DEPARTMENT; CITY OF OAKLAND
17 OFFICE OF THE CITY ADMINISTRATOR;
and DOES 1 THROUGH 20,

18 Respondents and Defendants.

19 I METALS, INC, a California corporation; and
20 DSF MANAGEMENT, INC., a California
corporation,

21 Real Parties In Interest.
22

Case No. **22CV020520**

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

CEQA CASE

C.C.P. §§ 1085 and 1094.5; Pub. Res. Code §§
21000 et seq.

1 **INTRODUCTION**

2 1. This action challenges Respondents City of Oakland, City of Oakland Planning and
3 Building Department, and City of Oakland Office of the City Administrator’s (each a Respondent and
4 collectively Respondents) unlawful approval of major indoor cannabis cultivation projects in East
5 Oakland—an overburdened community of color—without any analysis of their environmental impacts
6 under the California Environmental Quality Act (CEQA), Pub. Res. Code, §§ 21000 *et seq.* The first of
7 these projects, proposed by I Metal Inc. (I Metal), is a 2,400 square foot indoor cannabis cultivation
8 facility located at 60 Hegenberger Place, Oakland, CA 94621. The second project, proposed by DSF
9 Management Inc. (DSF Management), is a 7,280 square foot indoor cannabis cultivation facility located
10 at 740 Kevin Court, Oakland, CA 94621. A true and correct copy of each project’s “Preliminary
11 Checklist for Cannabis Operators Pursuant to the California Environmental Quality Act (CEQA)”
12 (CEQA Checklist) and each project’s corresponding Notice of Exemption is attached as **Exhibit A.**

13 2. In addition, Petitioner Environmental Democracy Project (EDP or Petitioner) brings this
14 action for declaratory and injunctive relief to put an end to Respondents’ pattern and practice of
15 exempting all cannabis cultivation projects from CEQA—projects that have significant environmental
16 impacts including toxic emissions from diesel generators and diesel trucks, significant energy and water
17 use, traffic, odors, and hazardous waste. Respondents routinely grant permits for cannabis cultivation
18 projects in East Oakland without conducting any analysis of their environmental impacts on the
19 neighborhoods and residents of East Oakland under CEQA. For example, Respondents have, on
20 hundreds of occasions, failed to ensure that proposed indoor cannabis cultivation facilities have access
21 to the power grid, that the grid has sufficient power to fuel the facilities’ energy intensive operations,
22 and that the facilities will not resort to using massive diesel-generators in lieu of grid power.

23 3. Residents of East Oakland living near the proposed project sites are concerned about,
24 among other things, indoor cannabis cultivation operations’ potential to cause significant environmental
25 impacts, and the unfairness of siting more cannabis cultivation projects in a community that already
26 hosts numerous cultivation projects. Nevertheless, Respondents regularly approve cannabis cultivation
27 projects without conducting any environmental review under CEQA.

1 10. Respondent City of Oakland (the City) is a municipal corporation and a chartered city,
2 organized and existing under the laws of the State of California. The City and its officials, boards,
3 commissions, departments, bureaus, and offices constitute a single “local agency,” “public agency” or
4 “lead agency” as those terms are used under the California Environmental Quality Act. *See* Pub. Res.
5 Code §§ 21062, 21063, 21067; Oak. Muni. Code § 17.158.090. Thus, the City has the principal
6 responsibility for conducting environmental review of its actions. The City has a duty to comply with
7 state law, including CEQA.

8 11. Respondent City of Oakland Planning and Building Department (Planning and Building)
9 is a subdivision of the City of Oakland that is responsible for CEQA compliance in Oakland. Planning
10 and Building is a responsible agency under CEQA. *See* Pub. Res. Code § 21069.

11 12. Respondent City of Oakland Office of the City Administrator (City Administrator) is
12 “responsible for implementing a process for selection of qualified cannabis operators and may set forth
13 criteria to determine an operator’s qualifications to meet the requirements of the applicable City’s
14 ordinances, regulations and state law.” 2021-2022 Administrative Regulations and Performance
15 Standards for City of Oakland Cannabis Operators § III.A. The City Administrator’s Office has
16 authorized hundreds of exemptions from CEQA for cannabis cultivation facilities. The City
17 Administrator’s Office is a responsible agency under CEQA. *See* Pub. Res. Code, § 21069.

18 13. I Metal, Inc. is named as Real Party in Interest because it is a “person” under Public
19 Resources Code section 21065, subdivisions (b) and (c). *See* Pub. Res. Code § 21167.6.5.

20 14. DSF Management, Inc. is named as Real Party in Interest because it is a “person” under
21 Public Resources Code section 21065, subdivisions (b) and (c). *See* Pub. Res. Code, § 21167.6.5.

22 15. EDP is unaware of the true names and capacities of Respondents or Real Parties in
23 Interest fictitiously named Does 1 through 20 and sues such Respondents or Real Parties in Interest by
24 fictitious names. EDP is informed and believes, and on that basis alleges, that the fictitiously named
25 Respondents or Real Parties in Interest are also responsible for the actions described in this Petition.
26 When the true identities and capacities of these Respondents or Real Parties in interest have been
27 determined, Petitioner will amend this petition, with leave of the Court if necessary, to insert such
28 identities and capacities.

1 **JURISDICTION AND VENUE**

2 16. EDP realleges and incorporates by reference the preceding paragraphs in their entirety.

3 17. This Court has jurisdiction over the matters alleged herein pursuant to Code of Civil
4 Procedure sections 526, 527, 1060, 1085, 1087, and 1094.5, and Public Resources Code sections 21168,
5 21168.5, and 21168.9.

6 18. Venue for this action properly lies in the Superior Court for the State of California in and
7 for the County of Alameda pursuant to Code of Civil Procedure section 394. The activities authorized
8 by Respondents have occurred, will occur, and are occurring in and around the City of Oakland, located
9 in Alameda County.

10 19. Respondents have taken final agency actions with respect to approving the projects at
11 issue without complying with CEQA.

12 20. Respondents have a duty to comply with CEQA. EDP possesses no effective remedy to
13 challenge the approvals at issue in this action other than by means of this lawsuit.

14 21. On October 21, 2022, EDP complied with Public Resources Code section 21167.5 by
15 serving a written notice on Respondents regarding EDP’s commencement of this action. Attached
16 hereto as **Exhibit B** is the true and correct copy of this written notice.

17 22. EDP is filing and serving its Notice to Attorney General concurrently with this filing,
18 thereby complying with the requirements of Public Resources Code section 21167.7 and Code of Civil
19 Procedure section 388.

20 23. EDP performed all conditions precedent to filing the instant action and exhausted any and
21 all available administrative remedies to the extent possible and required by law. EDP and its members
22 made numerous objections highlighting Respondents’ failure to comply with CEQA. In response, the
23 City Attorney’s office told EDP’s counsel that the City’s CEQA exemption determinations were “made
24 pursuant to, and consistent with, City Code and State law requirements. Further, the determination does
25 not contain an appeal process. Thus, the City’s decision is final.”

26 24. Accordingly, EDP has no plain, speedy, or adequate remedy in the course of ordinary law
27 unless this Court grants the requested writ of mandate to require Respondents to set aside their project
28 approvals. In the absence of such remedies, Respondents’ approvals will remain in effect in violation of

1 of CEQA. EDP’s members and residents in East Oakland and nearby communities will be irreparably
2 harmed. No money damages or legal remedy could adequately compensate for that harm.

3 CEQA’S REQUIREMENTS

4 25. CEQA requires an agency to analyze the potential environmental impacts of its proposed
5 actions in an Environmental Impact Report (EIR) except in certain limited circumstances. *See, e.g.,*
6 Pub. Res. Code § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9
7 Cal.App.4th 644, 652. “The foremost principle in interpreting CEQA is that the Legislature intended the
8 act to be read so as to afford the fullest possible protection to the environment within the reasonable
9 scope of the statutory language.” *Communities. for a Better Env. v. Cal. Res. Agency* (2002) 103 Cal.
10 App.4th 98, 109.

11 26. CEQA’s primary purposes are as follows. CEQA informs decision makers and the public
12 about the potential, significant environmental effects of a project. 14 Cal. Code Regs. § 15002(a)(1). “Its
13 purpose is to inform the public and its responsible officials of the environmental consequences of their
14 decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed
15 self-government.’” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564. The
16 EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its
17 responsible officials to environmental changes before they have reached ecological points of no return.”
18 *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354; *County of*
19 *Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

20 27. CEQA requires public agencies to avoid or reduce environmental damage when
21 “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. 14
22 Cal. Code Regs. § 15002(a)(2) and (3); *see also Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of*
23 *Goleta Valley*, 52 Cal.3d at p. 564. The EIR serves to provide agencies and the public with information
24 about the environmental impacts of a proposed project and to “identify ways that environmental damage
25 can be avoided or significantly reduced.” 14 Cal. Code. Regs. §15002(a)(2). If the project will have a
26 significant effect on the environment, the agency may approve the project only if it finds that it has
27 “eliminated or substantially lessened all significant effects on the environment where feasible” and that
28

1 any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”
2 Pub. Res. Code § 21081; 14 Cal. Code Regs. § 15092(b)(2)(A) & (B).

3 28. A lead agency must make a good-faith effort, based to the extent possible on scientific
4 and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting
5 from a project. A lead agency shall have discretion to determine, in the context of a particular project,
6 whether to: (1) Quantify greenhouse gas emissions resulting from a project; and/or (2) Rely on a
7 qualitative analysis or performance based standards. 14 Cal. Code Regs. § 15064.4.

8 29. CEQA requires evaluation, disclosure, mitigation, and consideration of alternatives for
9 significant impacts caused by air pollution, water use, traffic, hazardous waste, noise, and other impacts.
10 *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165,
11 1206 (hazardous waste impacts required environmental review under CEQA); *King & Gardiner Farms,*
12 *LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 895 (air pollution, noise impacts, and water supply
13 impacts required adequate environmental review under CEQA).

14 STATEMENT OF FACTS

15 The Significant Environmental Impacts from Indoor Cannabis Cultivation Facilities

16 30. The electricity consumption of indoor cannabis cultivation facilities is staggering. Indoor
17 cannabis cultivation is one of the most energy-intensive industries in the nation. “Indoor marijuana
18 cultivation has an energy demand that rivals data centers. With energy intensities around 2,000 watts
19 per minute, it consumes between 50 and 200 times more than an average office building and 66 times
20 more than an average home.” Gina S. Warren, *Hotboxing the Polar Bear: The Energy and Climate*
21 *Impacts of Indoor Marijuana Cultivation* BOSTON UNIVERSITY LAW REVIEW (2015). Attached hereto as
22 **Exhibit C** is a true and correct copy of this scientific study.

23 31. Indoor cannabis cultivation results in approximately \$6 billion in energy costs annually,
24 accounting for at least 1% of the nation’s electricity. Evan Mills, *The carbon footprint of indoor*
25 *Cannabis production*, ENERGY POLICY (Volume 46, 2012). Attached hereto as **Exhibit D** is a true and
26 correct copy of this scientific study.

27 32. In California, the nation’s largest marijuana producer, indoor cannabis production
28 **consumes three percent of state’s total electricity**, and eight percent of household electricity. Warren

1 2015 [Exhibit C]. In 2010, these figures corresponded to 17 million metric tons of greenhouse gas
2 (CO2) emissions for the United States, and 4 million metric tons of CO2 emissions for California; these
3 emissions were estimated to have been released from electricity generated from fossil fuel sources being
4 used to grow cannabis. Mills 2012 [Exhibit D].

5 33. One average kilogram of final cannabis product is associated with 4,600 kilograms of
6 carbon dioxide emissions into the atmosphere, or that of 3 million average U.S. cars when aggregated
7 across all national production. Mills 2012 [Exhibit D].

8 34. Typical indoor cannabis cultivation facilities cost millions of dollars and are state-of-the-
9 art “grow rooms” constructed as isolated ecosystems in locations such as warehouses. Electricity is used
10 to power high-intensity discharge lights that take the place of the sun in driving photosynthesis and
11 secondary plant metabolite production. A primary goal of indoor growers is to create an environment
12 that maximizes the quantity and quality of marijuana flower buds produced. Indoor growing operations
13 rely on tightly regulated light, temperature, humidity, and air quality, which come at a large cost in the
14 form of electricity. Mills, *Energy Use by the Indoor Cannabis Industry: Inconvenient Truths for*
15 *Producers, Consumers, and Policymakers* THE ROUTLEDGE HANDBOOK OF POST-PROHIBITION
16 CANNABIS RESEARCH (2021). Attached hereto as **Exhibit E** is a true and correct copy of this scientific
17 study.

18 35. Cannabis cultivation and processing operations emit a variety of air contaminants
19 including volatile organic compounds and combustion by-products. Vera Samburova, *Dominant*
20 *volatile organic compounds (VOCs) measured at four Cannabis growing facilities: Pilot study results* J
21 AIR WASTE MANAG ASSOC. (2019; 69:11) 1267-1276. Attached hereto as **Exhibit F** is a true and
22 correct copy of this scientific study. Volatile organic compounds are air contaminants regulated under
23 the federal Clean Air Act and California’s State Implementation Plan.

24 36. Cannabis operations also generate hazardous waste. Examples of hazardous waste
25 generated by cannabis operations include pesticides or other chemicals used in the cultivation process,
26 solvents or other chemicals used in the production of cannabis concentrate, and cannabis soaked in a
27 flammable solvent for purposes of producing a cannabis concentrate. Indoor practices involving
28 hydroponics yield contaminated wastewater that may be introduced into or circumvent wastewater

1 streams. Mills 2021 [Exhibit E]. Moreover, cultivators commonly use non-degrading growing media,
2 such as mineral wool that is saturated with nutrient-laden water, that is typically sent to landfill after
3 each harvest. *Id.* An operation with 100,000 square feet of canopy requires 14,000 to 34,000 cubic feet
4 of mineral wool per cycle, which results in the generation of approximately to 85,000 to 200,000 cubic
5 feet of solid waste to landfill over a year with six growing cycles. *Id.*

6 37. The City requires indoor cannabis cultivation facilities to complete a cursory “CEQA
7 Checklist” prior to approval. The CEQA Checklist requires, among other things, project proponents to
8 enroll in the City’s “renewable 100 option” program. This “program” is nothing more than meaningless
9 greenwashing. Indoor cannabis cultivation requires far more energy than the state’s current renewable
10 energy sources could ever supply. Evan Mills, *California: a cannabis-climate train wreck in progress*
11 (2021). A true and correct copy of this study is attached hereto as **Exhibit G**. The energy for indoor
12 cannabis cultivation operations comes almost entirely from climate-killing fossil-fuel sources—which is
13 anathema to Oakland’s clean energy goals. *Id.* For example, Oakland’s Equitable Climate Action Plan
14 enacted in 2020 requires significant greenhouse gas reductions through, among other things, “aligning
15 permit and project approvals” with the City’s greenhouse gas reduction priorities. Inexplicably, the City
16 has not applied this policy to indoor cannabis cultivation facilities.

17 38. Yet, despite the significant environmental impacts from indoor cannabis cultivation
18 facilities, the City has exempted hundreds of cannabis cultivation facilities from CEQA—facilities that
19 are concentrated in overburdened communities of color such as East Oakland.

20 **Respondents Improper Approval of the I Metal, Inc. and DSF Management, Inc. Projects**

21 39. Respondents recently approved two large indoor cannabis cultivation operations in East
22 Oakland—a community of color that is overburdened by industrial pollution. The City exempted each
23 of these energy-intensive projects from CEQA review based on a one-page boilerplate Notice of
24 Exemption.

25 40. The I Metal facility is in East Oakland. I Metal proposes to construct an indoor cannabis
26 cultivation facility that will occupy approximately 2,400 square feet of a 8,712 square foot facility. I
27 Metal completed the City’s CEQA Checklist on or around April 20, 2022, indicating that the project will
28

1 require “New Construction.” The City Clerk issued I Metal a Notice of Exemption from CEQA on
2 September 16, 2020. *See* CEQA Checklist and Notice of Exemption [Exhibit A].

3 41. The DSF Management facility is also located in East Oakland. DSF Management
4 proposes to construct an indoor cannabis cultivation facility that will occupy approximately 7,280 square
5 feet of a facility of unknown size (though the Notice of Exemption lists the facility size at 18,000 square
6 feet.) DSF Management completed the City’s CEQA Checklist on or around July 11, 2022. The City
7 issued DSF Management an undated and unsigned Notice of Exemption from CEQA. *See* CEQA
8 Checklist and Notice of Exemption [Exhibit A].

9 42. The City’s I Metal and DSF Management Notices of Exemption from CEQA are
10 identical. Both Notices of Exemption state that the project is categorically exempt from CEQA under
11 the “Existing Facilities” exemption, 14 Cal. Code Regs. § 15301 (despite I Metal indicating “New
12 Construction”). Both Notices of Exemption further state that the project is exempt under the “Other”
13 exemption for “projects consistent with a community plan, general plan, or zoning,” citing 14 Cal. Code
14 Regs. § 15183(f). Both Notices of Exemption state as the “[r]eason why project is exempt” that “[t]he
15 Applicant is proposing to operate as a[n] indoor cannabis cultivator in an existing commercial facility
16 and will use non-fossil fuel services to power the operation. Further, the use of indoor cannabis
17 cultivation is permitted at the discretion of the City Administrator under Chapter 5.81 of the Oakland
18 Municipal Code. Thus, the proposed use will not have a significant effect on the environment.” *See*
19 Exhibit A.

20 43. The City’s determination as to the projects’ exemption from CEQA precluded any public
21 CEQA process, restricting opportunities for meaningful public participation and public comments
22 concerning the location and potential impacts of the proposed projects.

23 **The City’s Pattern and Practice of Exempting All Indoor**
24 **Cannabis Cultivation Operations from CEQA**

25 44. The City has approved hundreds of indoor cannabis facilities without ensuring that there
26 is sufficient electricity from the grid for the facilities to operate. As a result of the City’s failure to
27 conduct CEQA review, numerous facilities have been using massive diesel generators to supply power
28 to their energy-intensive facilities. One such facility, Green Sage Management, LLC, operated nine

1 semi-truck size diesel generators twenty-four hours a day, seven days a week, for over two years. The
2 City did nothing to stop them. It was not until EDP obtained a federal injunction that the generators at
3 the Green Sage facility were shut down. *See Environmental Democracy Project v. Green Sage*
4 *Management, LLC* (N.D. Cal., July 13, 2022, No. 22-CV-03970-JST) 2022 WL 4596612, at *1.

5 45. The City has also exempted hundreds of indoor cannabis cultivation facilities from
6 CEQA review without considering their impacts on water during a time of severe drought in California.
7 Cannabis is a water- and nutrient-intensive crop. Indoor cannabis cultivation consumes approximately
8 2.5 and 2.8 gallons of water per day per plant in August and September. Zhonghua Zheng, *A narrative*
9 *review on environmental impacts of cannabis cultivation* Journal of Cannabis Research (2021). A true
10 and correct copy of this scientific study is attached hereto as **Exhibit H**. The water demand for cannabis
11 growing far exceeds the water needs of many commodity crops. *Id.* For example, in a growing season
12 cannabis plants need twice as much water as that required by maize, soybean, and wheat plants. *Id.*

13 46. The City has never conducted CEQA review for any of the hundreds of indoor cannabis
14 cultivation facilities it has approved. The only effort the City makes regarding CEQA is to require the
15 project proponent to fill out a “Preliminary Checklist for Cannabis Operators Pursuant to California
16 Environmental Quality Act.” The CEQA Checklist does not require the applicant to identify any
17 potentially significant environmental impacts from the proposed project such as energy consumption,
18 access to the grid, air pollution, water use, traffic, noise, odors, or hazardous waste. Once the checklist
19 is complete, the City automatically grants a Notice of Exemption or otherwise exempts the facility from
20 CEQA review.

21 47. Indeed, the City candidly represents that Notices of Exemption are automatically granted
22 for all indoor cannabis cultivation facilities: “Completed CEQA questionnaires will be reviewed by the
23 Planning Department *and a Notice of Exemption (NOE) will be issued*. Applicants will be notified to
24 pick up the NOE and an Inspection Card will then be issued. Applicants will then file the NOE
25 document with the County Recorder’s Office and supply our office with the stamped copy” (emphasis
26 added.) A true and correct copy of the City’s webpage entitled “Apply for a Cannabis Permit” if
27 attached hereto as **Exhibit I**.

1 48. EDP requested public documents regarding all cannabis facilities approved by the City.
2 To date, the City has produced 2,298 “CEQA Checklists” along with a smaller number of Notices of
3 Exemption for cannabis projects the City has approved. All of the 2,298 applications for cannabis
4 facilities were exempted from CEQA by the City.

5 49. For example, one project proponent identified the following major additions necessary to
6 turn its facility into a state-of-the-art indoor cannabis cultivation operation:

- 7 • “Renovation of partial existing warehouse (6500SF out of 7600SF) for the use of
- 8 cannabis cultivation, distribution, and delivery to include approximately:
- 9 • 3 Cultivation Rooms
- 10 • 130 LED Cultivation Lights, Tables, and Irrigation System
- 11 • 60 Tons of AC
- 12 • CO2 (Delivered Liquid) Supply System
- 13 • Supply and Exhaust Fans for Each Room
- 14 • Dry/Storage Rooms, Office
- 15 • Add Fire Sprinkler System and Fire/CO2 Alarm”

16 A true and correct copy of the “CEQA Checklist” and Notice of Exemption for Emerald Wizards, Inc. is
17 attached hereto as **Exhibit J**. Despite these significant additions to transform the facility into a major
18 cannabis cultivation operation, the City exempted the project from CEQA as an “Existing Facility.”

19 50. In another instance, the City exempted a cannabis cultivation facility from CEQA review
20 based on its representation that the project would use “high energy efficiency bulbs, low flow toilets and
21 water systems, and a strict recycling program . . . to mitigate our environmental impacts.” A true and
22 correct copy of the CEQA Checklist for DC Capital Holdings LLC is attached hereto as **Exhibit K**.
23 However, following approval, this facility operated massive diesel-fired generators twenty-four hours a
24 day for two years because the facility lacked power supply from the grid—yet another example of the
25 City’s pattern and practice of violating CEQA at the expense of the overburdened communities of color
26 in which these facilities are located.

27 **The City’s Improper Use of Categorical Exemptions to Evade CEQA Review**

1 51. In issuing boilerplate Notices of Exemption to cannabis cultivation applicants, the City
2 overwhelmingly relies on (1) the categorical exemption for “existing facilities” under 14 Cal. Code
3 Regs. § 15301; (2) an exemption for “[p]rojects consistent with a community plan, general plan or
4 zoning” citing 14 Cal. Code Regs. § 15183(f); (3) an assertion that the facilities “will use non-fossil fuel
5 services to power the operation,” and (4) the City Administrator’s discretion to permit indoor cannabis
6 cultivation under Oakland Municipal Code § 5.81. Each of these reasons for exempting cannabis
7 cultivation operations from CEQA fails.

8 **A. The Existing Facilities Exemption.**

9 52. The City incorrectly, and uniformly, relies on the categorical exemption for “existing
10 facilities” under 14 Cal. Code Regs. § 15301 (the Existing Facilities Exemption) to exempt indoor
11 cannabis cultivation projects. The Existing Facilities Exemption only applies to activities involving
12 “negligible” or “no expansion of [an] existing or former use.” 14 Cal. Code Regs. § 15301. This class
13 of exemption “consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor
14 alteration of existing . . . facilities.” *Id.* In determining whether a project falls into this exempt class, the
15 “key consideration is whether the project involves negligible or no expansion of use.” *Id.* Accordingly,
16 “[t]he relevant issue in determining whether the existing facilities exemption applies is whether the
17 project involves ‘expansion of a use beyond that *existing or former use.*’” *San Diegans for Open*
18 *Government v. City of San Diego* (2018) 31 Cal.App.5th 349, 371 (emphasis in original).

19 53. The conversion of storage warehouses, factories, auto shops, and other existing structures
20 into state-of-the-art “grow rooms” constructed as isolated ecosystems for the cultivation of cannabis are
21 not “negligible” modifications or “no expansion of [an] existing or former use.” These indoor cannabis
22 cultivation projects are in fact wholly new uses—not minor modifications to an existing use. The
23 projects require the addition of equipment capable of providing high-intensity lighting, CO2 generation,
24 ventilation, irrigation, climate control, diesel-truck trips, generators, and security, requiring massive
25 amounts of electricity, water, and alterations to the site. In fact, cannabis cultivation was not a legally
26 permitted use of any facility in Oakland prior to 2016, well after the erection of the vast majority of the
27 structures now being converted to this purpose. These major transformations to indoor cannabis
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1 cultivation facilities are not minor alterations to an existing use. Thus, the Existing Facilities exemption
2 does not apply.

3 **B. Exemption for Projects Consistent with a Community Plan, General Plan, or**
4 **Zoning.**

5 54. The exemption for “Projects Consistent with a Community Plan, General Plan, or
6 Zoning” does not justify the City’s uniform exemption of all indoor cannabis cultivation operations from
7 CEQA. *See* 14 Cal. Code Regs. § 15183. That exemption provides that: “CEQA mandates that projects
8 which are consistent with the development density established by existing zoning, community plan, or
9 general plan policies for which an EIR was certified shall not require additional environmental review,
10 except as might be necessary to examine whether there are project-specific significant effects which are
11 peculiar to the project or its site.” Here, the City does not identify any EIR that was certified that
12 governs indoor cannabis cultivation facilities. Even if there were such an EIR, indoor cannabis
13 cultivation facilities have “project-specific significant effects which are peculiar to the project”
14 including stunning energy-use requirements, diesel particulate matter pollution, odors, noise, traffic, and
15 hazardous waste.

16 **C. The Projects Require an Enormous Amounts of Fossil Fuels.**

17 55. It is patently false that the projects will “use non-fossil fuel services to power the
18 operation.” *See* Notice of Exemption [Exhibit A]. Because of the staggering amount of power needed
19 for indoor cultivation facilities, massive amounts of fossil-fuel sources are required. Indoor cannabis
20 cultivation operations require twenty-four hour continuous energy to ensure their product meets control
21 standards. Warren 2015 [Exhibit C]. There is not enough renewable energy resources in the entire state
22 to supply the energy demand of indoor cultivation. Mills 2021 [Exhibit E].

23 **D. The City’s Discretion to Permit Indoor Cannabis Operations.**

24 56. The City mistakenly supports issuing boilerplate Notices of Exemption to proposed
25 indoor cannabis cultivation projects with the statement: “the use of indoor cannabis cultivation is
26 permitted at the discretion of the City Administrator under Chapter 5.81 of the Oakland Municipal Code.
27 Thus, the proposed use will not have a significant effect on the environment.” *See* Notice of Exemption
28 [Exhibit A]. CEQA, however, expressly applies to discretionary projects. Moreover, the City has

1 utterly failed to exercise its discretion to ensure that cannabis operations will have a negligible
2 environmental impact as the City contends.

3 57. Discretionary projects (as opposed to ministerial projects) are subject to CEQA review.
4 Pub. Res. Code § 21080(a); *see also Protecting Our Water & Env't'l Resources v. County of Stanislaus*
5 (2020) 10 Cal.5th 479, 488. “CEQA applies in situations where a governmental agency can use its
6 judgment in deciding whether and how to carry out or approve a project. A project subject to such
7 judgmental controls is called a ‘discretionary project.’” 14 Cal. Code Regs. § 15002(i); *see also id.* §
8 15357. The City’s Notices of Exemption correctly state that these projects are approved at the City’s
9 discretion. Thus, CEQA applies.

10 58. Oakland Municipal Code section 5.81 provides in pertinent part that “[t]he City
11 Administrator shall establish criteria for minimizing the carbon footprint, environmental impact and
12 resource needs of permitted facilities. Applicants that demonstrate they can satisfy these environmental
13 criteria, such as cultivators seeking to operate greenhouse facilities, ***will be given preference in the***
14 ***processing of their application.***” Oak. Muni. Code § 5.81.050(C) (emphasis added). The City’s
15 Administrative Regulations for Cannabis Operators further clarify “[t]he City, in its discretion . . . may
16 determine that either: (1) a CEQA exemption applies and a Notice of Exemption is appropriate, or (2)
17 further environmental study . . . may be needed.” 2021-2022 Administrative Regulations and
18 Performance Standards for City of Oakland Cannabis Operators ¶ 42.

19 59. The Municipal Code and Administrative Regulations do not support the City’s
20 conclusory assertion that its discretion in permitting cannabis operations exempts them from CEQA
21 while ensuring that they “will not have a significant effect on the environment.” *See* Notice of
22 Exemption [Exhibit A]. Rather, the City’s discretion triggers CEQA, and most certainly does not ensure
23 that these facilities will have a negligible environmental impact.

24 **E. The Exceptions to Any Categorical Exemptions Apply Here.**

25 60. Even where categorical exemptions apply, they are not absolute. CEQA provides several
26 exceptions when exemptions must be denied. *See* 14 Cal. Code. Regs. § 15300.2. Relevant here are the
27 “cumulative impact” and “unusual circumstances” exceptions under section 15300.2 (b) and (c). Each
28 exception is applicable to the City’s permitting of cannabis cultivation operations.

1 61. The “cumulative impact” exception applies where the cumulative impact of successive
2 projects of the same type in the same place is significant. 14 Cal. Code Regs. § 15300.2(b). CEQA
3 provides that the “cumulative impacts from several projects is the change in the environment which
4 results from the incremental impact of the project when added to other closely related past, present, and
5 reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor
6 but collectively significant projects taking place over a period of time.” *Id.* § 15355(b); *See* Pub. Res.
7 Code § 21083(b)(2).

8 62. Here, the City has approved hundreds of indoor cannabis cultivation operations. A great
9 many of them are in East Oakland. Applications for and approvals of these projects have steadily and
10 exponentially increased in the years since the City began permitting indoor cannabis cultivation. *See*
11 City of Oakland Cannabis Regulatory Commission 2019-2020 Annual Reports, Attachment D: 2017-
12 2020 City of Oakland Cannabis Application and Permit Trends. A true and correct copy of this
13 Attachment D is Attached hereto as **Exhibit L**. East Oakland has a significant amount of closely related
14 past and present cannabis cultivation projects. And future projects of the same type and in the same
15 place are reasonably foreseeable. The cumulative impact of these operations on East Oakland— each
16 demanding unavailable quantities of electricity, each emitting carbon dioxide, increasing traffic, and
17 producing hazardous waste—are significant. Therefore, the “cumulative impact” exception applies.

18 63. CEQA’s “unusual circumstances” exception negates the finding of an exemption “where
19 there is a reasonable possibility that the project will have a significant effect on the environment due to
20 unusual circumstances.” 14 Cal. Code Regs. § 15300.2(c). “Unusual circumstances” are those that
21 “differ from the general circumstances of the projects covered by the particular categorical exemption”
22 and which “create an environmental risk that does not exist for the general class of exempt projects.”
23 *Azusa*, 52 Cal.App.4th at 1207.

24 64. Despite the City’s formulaic reliance on the Existing Facility Exemption for indoor
25 cannabis cultivation projects, the conversion of storage warehouses, factories, auto shops, and other
26 existing structures into state-of-the-art “grow rooms” constructed as isolated ecosystems, differs greatly
27 from the general circumstances (i.e. “negligible” modifications or “no expansion of [an] existing or
28 former use.”) that fall within that exemption. Adding equipment capable of providing high-intensity

1 lighting, CO2 generation, ventilation, irrigation, climate control, and security, requiring massive
2 amounts of electricity, water, and alterations to the site, are indeed unusual circumstances—
3 circumstances that have only legally existed in Oakland since 2016. Thus, CEQA’s “unusual
4 circumstances” exception applies to indoor cannabis cultivation projects in East Oakland.

5 **FIRST CAUSE OF ACTION**

6 **Violations of the California Environmental Quality Act**
7 **Injunctive and Declaratory Relief**
8 **(Against City of Oakland, Planning Department, City Administrator, and Real Parties in Interest)**

9 65. EDP realleges and incorporates by reference the preceding paragraphs in their entirety.

10 66. CEQA is designed to ensure that government agencies incorporate the goal of long-term
11 protection of the environment into their decisions that may affect the environment. CEQA applies to
12 any discretionary action taken by an agency that may cause a reasonably foreseeable change in the
13 environment.

14 67. In furtherance of its goal of environmental protection, CEQA requires that the lead
15 agency prepare an Environmental Impact Report (EIR) for a project whenever substantial evidence in
16 the record supports a fair argument that the project may have a significant impact on the environment.
17 As the cornerstone of the CEQA process, the EIR must disclose and analyze a project’s potentially
18 significant environmental impacts. In addition, the EIR also must inform decision-makers and the
19 public of feasible mitigation measures and alternative project designs or elements that would lessen or
20 avoid the project’s significant adverse environmental impacts.

21 68. CEQA also mandates that the lead agency adopt all feasible mitigation measures that
22 would reduce or avoid any of the project’s significant environmental impacts. If any of the project’s
23 significant impacts cannot be mitigated to a less-than-significant level, the project can be approved only
24 if the agency finds that the project’s benefits would outweigh its unavoidable impacts.

25 69. Under CEQA, all findings required for any agency’s approval of a project must be legally
26 adequate and supported by substantial evidence in the administrative record. CEQA further requires that
27 an agency provide an explanation of how the evidence in the record supports the conclusions that the
28 agency has reached.

1 from indoor cannabis cultivation facilities, and impose all feasible mitigation measures and consider
2 alternatives that will reduce the impact to a level of insignificance. 14 Cal. Code Regs. § 15092(b).

3 75. Respondents have exempted hundreds of indoor cannabis cultivation facilities from
4 CEQA—facilities that have the potential to cause significant impacts on the environment. EDP has
5 reviewed thousands of pages of public records regarding indoor cannabis operations in the City.
6 EDP is not aware of the City ever requiring CEQA review for an indoor cannabis cultivation
7 facility. Thus, the City has a pattern and practice of evading CEQA review for all indoor cannabis
8 cultivation facilities.

9 76. Respondents abused their discretion and failed to proceed in the manner required by
10 CEQA by approving hundreds of cannabis cultivation projects that have the potential to cause
11 significant environmental impacts including energy use, greenhouse gas emissions, diesel particulate
12 matter emissions, traffic, odor, noise, and hazardous waste. The City’s abuse of discretion and failure to
13 proceed in the manner required by law is prejudicial. Thus, the City’s pattern and practice of evading
14 CEQA must be declared unlawful and enjoined.

15 77. There is a present and actual existing controversy between EDP and Respondents as
16 to the legality of Respondents’ ongoing pattern and practice of evading CEQA review of cannabis
17 cultivation projects. Petitioner contends that Respondents are in violation CEQA in each of the
18 respects alleged above. Respondents have not agreed to remedy the violations despite Petitioner’s
19 attempt to resolve this matter outside of the judicial context. Instead, Respondents believe that
20 their conduct and repeated pattern of conduct is in accord with the law. As Supervising Deputy
21 City Attorney Brian Mulry said in an email to counsel for EDP: Respondents’ actions were “made
22 pursuant to, and consistent with, City Code and State law requirements.”

23 78. Petitioner is entitled to a judicial determination of the rights and obligations of
24 Respondents with respect to their pattern and practice of exempting cannabis cultivation
25 projects from CEQA.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Environmental Democracy Project prays for judgment as follows:
28

1 1. For alternative and peremptory writs of mandate directing Respondents to vacate and set
2 aside their decisions to approve I Metals, Inc and DSF Management, Inc. without complying with
3 CEQA;

4 2. For alternative and peremptory writs of mandate directing Respondents to comply with
5 the requirements of CEQA and the CEQA Guidelines and take any other action as required by Public
6 Resources Code section 21168.9;

7 3. For a temporary stay, temporary restraining order, and preliminary and permanent
8 injunctions restraining Respondents and their representative agents, servants, and employees, and all
9 others acting in concert with Respondents on their behalf, from taking any action to authorize cannabis
10 cultivation facilities pending full compliance with the requirements of CEQA, the CEQA Guidelines,
11 and State law;

12 4. For declaratory relief stating that Respondents' pattern and practice of exempting all
13 indoor cannabis cultivation facilities from CEQA is unlawful;

14 5. For costs of the suit;

15 6. For an order awarding Environmental Democracy Project its attorneys' fees under Code
16 of Civil Procedure section 1021.5 and other applicable authority; and

17 7. For such other and further relief as the Court deems just and proper.

18
19 DATED: October 21, 2022

WILLIAMS ENVIRONMENTAL

20
21 By: /s/ Lucas Williams
22 LUCAS WILLIAMS

23 Attorneys for Petitioner and Plaintiff
24 ENVIRONMENTAL DEMOCRACY PROJECT
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